

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

John Thomas Robinson, #256452,) C/A No. 8:08-1788-RBH
)
Petitioner,)
) **O R D E R**
vs.)
)
Robert Mauney, Warden of Livesay Correctional)
Institution,)
)
Respondent.)

)

The Plaintiff, *pro se*, instituted this action pursuant to 28 U.S.C. § 2254 on May 7, 2008.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Bruce Howe Hendricks, for pretrial handling. The matter is before this Court on the Report and Recommendation of Magistrate Judge Hendricks, which was issued on October 27, 2008. After analyzing the issues presented in this case, the Magistrate Judge recommended that this Court grant the respondent's motion for summary judgment and deny the petitioner's motion for summary judgment and for immediate trial. The petitioner filed objections to the Report, captioned as a motion to alter or amend the judgment on November 10, 2008.

The Magistrate Judge makes only a recommendation to the Court, to which any party may file written objections. The Court is not bound by the recommendation of the Magistrate Judge but, instead, retains responsibility for the final determination. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is required to make a *de novo* determination of those portions of the Report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those

portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1).

"An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law. . . or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). Determinations of factual issues by state courts are presumed correct and "the applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1).

The Court has reviewed the Petition, Report and Recommendation by the Magistrate Judge, the applicable law, and the petitioner's objections. On the basis of the authorities cited by the Magistrate Judge and this Court's review of the record, the Court overrules all objections, adopts the Report of the Magistrate Judge, and incorporates it into this Order by reference.

The respondent's motion for summary judgment is granted. The petitioner's motion for summary judgment and motion for immediate trial are denied. The petition for writ of habeas corpus is dismissed with prejudice.

IT IS SO ORDERED.

s/ R. Bryan Harwell

R. Bryan Harwell

United States District Judge

December 9, 2008
Florence, South Carolina